

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:08CR128**

UNITED STATES OF AMERICA,

)

Vs.

)

ORDER

GLENDY ALBRIGHT ADAMS.

)

)

THIS MATTER is before the court upon defendant's Motion for Bond Reconsideration. As the undersigned advised in open court, there is nothing the undersigned can do for defendant inasmuch as her remand to custody is *mandated* by 18, United States Code, Section 3143(a)(2), which provides:

- (2) The judicial officer shall order that a person who has been found guilty of an offense in a case described in subparagraph (A), (B), or (C) of subsection (f)(1) of section 3142 and is awaiting imposition or execution of sentence be detained unless—
 - (A)
 - (i) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or
 - (ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and
 - (B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

18 U.S.C. § 3143(a)(2). This provision provides that the court “shall” detain the

defendant. At this point, defendant's remedy is found exclusively in 18, United States Code, Section 3145(b)&(c), which provides as follows:

(b) Review of a Detention Order.— If a person is ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

(c) Appeal From a Release or Detention Order.— An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly. A person subject to detention pursuant to section 3143 (a)(2) or (b)(2), and who meets the conditions of release set forth in section 3143 (a)(1) or (b)(1), may be ordered released, under appropriate conditions, by the judicial officer, if it is clearly shown that there are exceptional reasons why such person's detention would not be appropriate.

18 U.S.C. § 3145(b)(&(c)). The undersigned respectfully notes that a district judge has been recently determined to be a "judicial officer" who can make the "exceptional reasons" determination under Section 3145(c), while a magistrate judge has not yet been included in that definition. United States v. Goforth, 546 F.3d 712 (4th Cir. 2008); United States v. Vilaiphone, 2009 WL 412958 (Feb. 19, 2009 W.D.N.C.)(Reidinger, J., applying Goforth and finding no exceptional circumstance).

ORDER

IT IS, THEREFORE, ORDERED that defendant's Motion for Bond Reconsideration (#175) is **DENIED** without prejudice as to filing an appropriate motion with the district court under Section 3145(b)&(c).

Signed: March 3, 2009

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

